

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE**

DEFENDANT WORLDWIDE INTERACTIVE NETWORK, INC.'S
MOTION TO COMPEL DE-DESIGNATION OF PLAINTIFF'S IMPROPERLY
DESIGNATED EXPERT REPORT OF DAVID NOLTE AND AMENDED EXPERT
REPORT OF DAVID NOLTE

Comes now Defendant Worldwide Interactive Network, Inc. (“WIN”), by and through counsel, and pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and the Protective Order entered in this case (Doc. 34, ¶ 8), moves this Court to compel Plaintiff ACT, Inc. (“Plaintiff” or “ACT”) to remove the “Highly Confidential/Attorneys’ Eyes Only” designation from the Expert Report of David Nolte and the Amended Expert Report of David Nolte. As grounds for this Motion, WIN submits the following:

1. The Parties entered into a Protective Order (Doc. 34) which permits the parties to designate certain documents and information as “Confidential” or “Highly Confidential/Attorneys’ Eyes Only.”
2. ACT’s expert witness, David Nolte (“Mr. Nolte”), authored two (2) expert reports regarding ACT’s alleged damages in which he relied upon ACT’s and WIN’s financial information regarding profits. WIN received the first report entitled “Expert Report of David Nolte” on May 20, 2019 (“Expert Report”). WIN received the second report entitled “Amended

Expert Report of David Nolte" on May 29, 2019 ("Amended Expert Report") ("Expert Report" and "Amended Expert Report" collectively referred to as "Nolte Expert Reports").

3. ACT designated the Nolte Expert Reports as "Highly Confidential/Attorneys' Eyes Only," meaning, as designated, WIN's counsel cannot discuss the findings of the Nolte Expert Reports or the information relied upon in the Reports with WIN.

4. Pursuant to Paragraph 8 of the Protective Order, WIN's counsel requested that ACT remove the "Highly Confidential/Attorneys' Eyes Only" designation in an email to ACT's counsel dated May 21, 2019. Counsel for ACT responded via email on May 22, 2019 and stated that ACT would not remove the "Highly Confidential/Attorneys' Eyes Only" designation. WIN's counsel requested again that the "Highly Confidential/Attorneys' Eyes Only" designation be removed from the Nolte Expert Reports on July 31, 2019 in an email to ACT's counsel. ACT's counsel responded on August 1, 2019 and reiterated that ACT would not remove the designation.

5. WIN is entitled to review the Nolte Expert Reports to determine whether the information relied upon by Mr. Nolte is true and accurate, particularly because ACT's counsel has expressed in open court that Mr. Nolte believes the WIN financial information relied upon in the Expert Reports is faulty and incomplete. WIN is further entitled to review the Nolte Expert Reports to consult with its counsel regarding rebutting the Reports and its overall defense of this matter. Prohibiting WIN from reviewing the Nolte Expert Reports is unduly prejudicial and arguably impractical. It hinders WIN's ability to meaningful discuss ACT's alleged damages with its counsel, to explain or rebut information relied upon in the Reports, and to make informed decisions regarding its defense of this matter.

In support of its Motion, WIN relies upon and incorporates by reference its Memorandum of Law in Support of its Motion to Compel De-Designation of Plaintiff's Improperly Designated Expert Report of David Nolte and Amended Expert Report of David Nolte.

WHEREFORE, WIN respectfully requests that this Court grant its Motion to Compel De-Designation of Plaintiff's Improperly Designated Expert Report of David Nolte and Amended Expert Report of David Nolte and compel ACT to remove the "Highly Confidential/Attorneys' Eyes Only" designation from the Nolte Expert Reports.

Respectfully submitted this 12th day of August, 2019.

s/ W. Kyle Carpenter _____

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CERTIFICATE OF CONFERRAL

The undersigned hereby certifies that, pursuant to Federal Rule of Civil Procedure 37 and the Protective Order entered in this case (Doc. 34), the parties have met and conferred regarding this matter and have been unable to reach an agreement regarding the designation of the Expert Report of David Nolte and the Amended Expert Report of David Nolte.

s/ W. Kyle Carpenter _____

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ W. Kyle Carpenter _____

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